



CHAMBER OF  
COMMERCE

June 22, 2004

San Jose City Council  
801 N. First Street, Suite 600  
San Jose, CA 95110

Dear San Jose City Council,

The San Jose Silicon Valley Chamber of Commerce is committed to open and good government, where decisions are made in the open, on the merits of each specific piece of legislation.

As a membership organization, the San Jose Silicon Valley Chamber of Commerce represents nearly 2,000 businesses, mostly in San Jose and mostly small businesses. We advocate for issues that we believe will create a business-friendly San Jose and keep our city competitive with other cities in the region, state, and nation. Our overriding concern is keeping the cost of doing business in check so that as many businesses that want to launch or locate in San Jose are able.

Many of our members belong to the Chamber for our strong advocacy efforts because as small businesses, most do not have the resources to engage the services of paid lobbyists or government relations professionals. We hope to be able to continue these strong advocacy efforts because we believe they are critical to the long-term economic success in San Jose.

The Chamber realizes that it is important for our organization to follow open government guidelines, therefore, as the President and CEO of the San Jose Silicon Valley Chamber of Commerce; I will register under any new ordinance adopted by the San Jose City Council.

There are a number of items that the San Jose Silicon Valley Chamber wishes to comment on regarding the proposed Lobbyist Ordinance.

Our comments fall into three main categories:

- The need for increased **clarity** in some cases,
- Issues related to the **cost** of doing business in San Jose, and
- Alleviating some of the **complexity** involved in the proposed Ordinance.

## Clarity

### **Membership Organization Requirements**

As written in Draft #3 of the Lobbyist Ordinance, we support the guidelines outlined that pertain to our membership organization. In the Chamber's case, the President and CEO of the organization as well as any and all staff that represent the Chamber on City issues will register under the new guidelines. Also, as written in Draft #3, our member companies, when appearing on behalf of Chamber advocacy efforts, our members will not be required to register.

One point that should be clarified before the Ordinance is adopted is whether a registration fee must be paid per individual registered as a lobbyist for a membership organization, or if one umbrella registration fee covers all lobbyists in the organization.

The Chamber would recommend that it be one fee per membership organization.

### **Prohibition D**

In the "Prohibition" section of the Draft #3 of the Lobbyist Ordinance, item D describes a prohibition on the introduction of any legislative or administrative action with the intent of lobbying on that specific issue in the future.

We believe that this specific Prohibition D must be clarified. For example, if the Chamber were seeking specific legislation to create a tax incentive to attract new businesses to San Jose, then that legislation was brought forward, would Prohibition D preclude the Chamber from lobbying for passage of this legislation? The Chamber would suggest that the Chamber, and other groups, be exempt from Prohibition D in cases similar to this.

## Cost

### **Requirements for Registration and Disclosure**

The Chamber also supports the goal of disclosure requirements as described in Draft #3 of the Lobbyist Ordinance pertaining to campaign contributions and fundraising efforts but believe there may be a more efficient and effective way to address these concerns, without adding to the cost of compliance for a lobbyist, an organization, or an individual business.

The Chamber believes that the same goal of this disclosure requirement of campaign contributions could be realized by directing the City Clerk to make campaign fundraising available to the public, online, as soon as they become available. By directing the City Clerk to make the details of campaign contributions available online in real time, we believe the same information asked for in the Lobbyist Ordinance could be retrieved, without additional costs for those registered.

Similar information is available on the State and Federal level and has created a much more open campaign financing system. The Chamber believes a similar system should be implemented on the local level.

### **Lobbying as "Cottage Industry" and Cost of Compliance**

Another concern the Chamber has with the new ordinance is that lobbying in San Jose will become a profession that few will undertake, in essence creating a "cottage industry" of individuals or firms who already comply with the new, more complicated regulations, while discouraging others to enter the fray.

In addition, these new, more complicated regulations will likely lead to increased cost of doing business to those that lobby the City of San Jose. These new costs are not only associated with the registration fees, but also with the cost of compliance in hiring attorneys or other compliance officers.

We hope that in the implementation of this new Ordinance that a careful eye is kept on keeping the overall process easy to explain, understand, and comply with to not only avoid the "cottage industry" concern, but also with the cost of compliance concern.

### **Complexity**

#### **Requirements of Elected and City Officials**

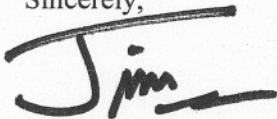
In Draft #3 of the Lobbyist Ordinance, there are many requirements of individuals, companies, and organizations outside of official City government with regards to fundraising for for-profit or non-profit organizations "at the behest" of City officials. The Chamber believes a more effective, and less complex way to achieve the same goal, is to place the requirement on elected or other City officials, rather than on registrants.

The Chamber believes that the initiator of the fundraising call, meaning the City officials, who partake in outside fundraising, described as "at the behest" in the Ordinance, should disclose their fundraising activities. For example, if a City Council Member is making fundraising calls for a non-profit they support, it is important for the public to know whom that City Council Member is asking, what amounts of money are being raised, and which non-profits that elected official is raising money on behalf of.

The Chamber believes the burden of fundraising disclosures should be with the City officials, rather than with the registrant. This requirement should include fundraising done by a City official who raises money for campaigns, both for issues and candidates, and other political organizations.

Thank you for efforts to reform the Lobbyist Ordinance in San Jose, and we hope these insights are helpful in your final analysis of this piece of legislation.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim", with a long horizontal line extending from the end of the signature.

Jim Cunneen  
President and CEO



## HAND DELIVERED

June 22, 2004

City of San Jose Ethics Task Force

There are some areas of concern regarding the draft report revised as of June 21, 2004. The public has only had access to this draft for 24 hrs. The goal of this report is to ensure "the highest ethical work environment for the residents of the City of San Jose." This can only happen with adequate input from residents as well as this task force.

12.12.220

Wording should include not only official's or official-elect's immediate family but partners, boyfriends/girlfriends.

12.12.130

Wording should include all city employees.

12.12.180

Add D. Lobbying at informal or social gatherings by lobbyist and/or client is prohibited.

12/12.500 C

Elections Commission must be expanded and reflect each of the council districts and the diverse community because the role of the Election Commission is being expanded.

12.12.530

Amend wording to read: required comprehensive/intense training every three years and review every year with a competency passing test required

12.12.540 B

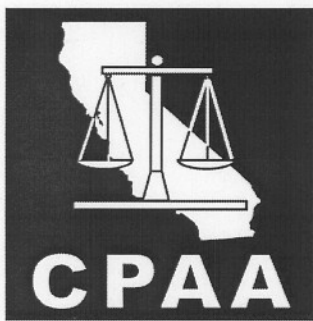
Amend to read: and will be fully investigated and acted upon within 30 days.

12.12.550

Penalties may be assessed for each violation both to lobbyist and clients individually for each violation.

Kathy Chavez Napoli

c-c: files



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Dear Blue Ribbon Task Force Members:

The California Political Attorneys Association is a membership organization comprised of nearly one hundred attorneys who practice in the areas of government ethics, lobbying regulations, election law, campaign finance, and other political laws. Our members represent public officials, government entities, corporations, lobbyists and others in the private and public sectors.

We understand that on June 22, 2004 you will meet to discuss a second draft of a revised City of San Jose Lobbyist Ordinance. Although some of our members have monitored your proceedings for clients, the CPAA thus far has not taken any position on the proposed changes to the ordinance.

We would, however, welcome the opportunity to provide comments and perspectives on the issues before you. Given the experience of our members in helping our clients comply with various lobbying laws on the state, federal and local levels, we have an interest in promoting uniform, fair and consistent regulation in this area. Thus, we feel strongly that City leaders need not "reinvent the wheel" on these issues, but learn from the experiences of other jurisdictions.

Please do not hesitate to contact the undersigned on behalf of the CPAA should you desire additional input from our organization. We

wish you the best of luck in  
your continuing work and look  
forward to working with our  
clients on implementation of  
your changes.

Very truly yours,

Stephen J. Kaufman  
Chair, Local Government  
Committee

# TESTIMONY ON DRAFT LOBBYIST ORDINANCE

June 22, 2004

It seems to me that there is a good deal wrong with the draft lobbyist ordinance pending before city council. Here are a few examples.

## LOSS OF CLARITY & CERTAINTY

The draft ordinance at Sec. 12.12.100 incorporates by reference definitions in the state political reform statute. This sounds like a good idea, but there are no fewer than sixty-seven (67) definitions in that statute, and this incorporation of definitions will result in confusion for the non-attorney seeking the "clarity and certainty" promised by draft Sec.12.12.010(B)(5)].

The existing lobbyist ordinance [Chapter 12.12] did not see the need to incorporate definitions contained in other legal statutes or ordinances, and it is clear that doing so in this fashion in the draft lobbyist ordinance will not promote "clarity and certainty" to the layman.

## PROBLEMS WITH "IMMEDIATE FAMILY MEMBER"

In addition, some of the incorporated definitions are problematic. Take "immediate family" for instance. This term does not appear in the current lobbyist ordinance [Chapter 12.12], but it does appear three times in the draft ordinance [Secs. 12.12.110, 12.12.420(H), and 12.12.510(B)].

How can this be a problem? It is an accepted principle of administrative rule drafting that adding terms serve to limit the key term, not expand it. Thus, the current lobbyist ordinance at Sec. 12.12.080 bans "doing any act with the express purpose and intent of placing any city or agency officer or designated employee under personal obligation". Any judicial body would understand that such an "obligation" could be created by the gift of a job or money to one's girl friend, boy friend, parent, parent-in-law, sibling, or child of any age. Thus the existing ordinance is fairly broad in possible interpretations of what "obligation" may mean. In fact, the question of "obligation" becomes one of fact that can be resolved by testimony.

In contrast, draft Sec. 12.12.510(B) bans "(d)doing any act with the express purpose and intent of placing any (c)ity official or immediate family member of a (c)ity official under personal or financial obligation, such as a loan or similar obligation." Thus, the draft ordinance, by using "immediate family member" serves to circumscribe the meaning of "obligation" by reference to "immediate family member" which is, in turn, defined in the state statute as "spouse and dependent children." [California Government Code, Title 9, Chapter 2, Sec. 82029] That narrows the meaning of "obligation" by incorporating the narrow definition of "immediate family member" from the statute. "Obligation" becomes a question of law and legal definition, not fact.



In the future, any judicial body would have to examine the meaning of "immediate family member" as a modifier of "city official" and would, more likely than not, conclude that this additional language narrows the legal meaning of "obligation" to benefits afforded to a small circle of people, namely officials, spouses and dependent children.

Girl friends, boy friends, fiancées, mothers, fathers-in-law, brothers, and sisters are among those NOT included in "immediate family member," and thus "obligation" would become a narrow legal term of art, not a question of fact with reference to benefits afforded to persons outside the "immediate family."

### **DEFINING "OBLIGATION" DOWN**

The same problem with changing definitions is carried on within the body of the draft lobbyist ordinance. Sec. 12.12.080 of the existing ordinance prohibits "(l)ocal governmental lobbyists, clients, contractors, and persons doing business with the city or the development agency" from acting to put a city official under personal obligation to such "lobbyist, client, contractor or person."

In contrast, draft Sec. 12.12.510 only prohibits "lobbyist(s) from placing any (c)ity official or immediate family member of a (c)ity official under personal or financial obligation, such as a loan or similar obligation, to such lobbyist." That is a very different and much narrower prohibition from the existing one.

Look at the meaning of "lobbyist" at draft Sec. 12.12.190 and the definition very definitely does not include "clients, contractors, and persons doing business with the city or the development agency."

To sum up, under the draft ordinance only "lobbyists" are prohibited from creating a personal obligation in a public official, and even that is prohibited only when the personal obligation is to the "lobbyist," himself or herself. This is a huge narrowing of the definition of who may be considered to be a creator of such an personal obligation.

### **EXCLUDING "REVOLVING DOOR RESTRICTIONS" FROM DEFINITION OF "LOBBYIST"**

Another principal area of concern when comparing the draft lobbyist ordinance with another part of the existing Title 12 is that Chapter 12.10 "Revolving Door Restrictions" may be considered in future litigation to have been implicitly amended by the draft lobbyist ordinance in the new Chapter 12.12 "San Jose Municipal Lobbying."

By failing to exclude in the draft Section 12.12.190 definition of "Lobbyist" those who are subject to the "Revolving Door Restrictions" of existing Chapter 12.10, any reasonable person would consider a "Lobbyist" under revised draft Section 12.12.190 not to be subject to the "Revolving Door Restrictions."



## **INCONSISTENCIES IN LOBBYIST REGISTRATION REQUIREMENTS**

Under the draft lobbyist ordinance [Secs. 12.12.410 & 12.12.420], the initial lobbyist registration is required to include disclosure of eight (8) different categories of past conduct. The problem is that some of the disclosures are limited to "the preceding calendar quarter" [Secs. 12.12.420(A), (B), (D), (G), and H)], and other of the disclosures are required for the "preceding 12 months" [Secs. 12.12.420 (C) and (E)].

There is no explanation given for the varying disclosure requirements, but it seems to me that these differences are of critical importance, and need to be reduced to a single standard, preferably that of the "preceding 12 months."

## **THE REAL PROBLEM**

The real problem is that the drafters of the draft lobbyist ordinance chose to rewrite an entirely new ordinance instead of merely adding new terms and prohibitions to the existing language in the current lobbyist ordinance. Once that rewriting began, there is no good way to compare the existing ordinance and its weaknesses with the draft ordinance and its efficacies. In short, the act of rewriting served to destroy the "clarity and certainty" promised in the text of the rewritten lobbyist ordinance [draft Sec.12.12.010(B)(5)].

There are many other problems with the draft ordinance, but perhaps the examples provided to you will suffice to make it clear that the draft ordinance is a step backward, not a step forward.

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